

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BROOKLYN MCBAY, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CHRISTINA BRYAN,

Respondent,

and

JEFFREY M. MCBAY,

Respondent-Appellant.

UNPUBLISHED

March 27, 2007

No. 272712

Wayne Circuit Court

Family Division

LC No. 06-451987-NA

Before: Zahra, P.J., and Bandstra and Owens, JJ.

MEMORANDUM.

Respondent Jeffrey McBay appeals as of right from an order terminating his parental rights to the minor child under MCL 712A.19b(3)(g) and (j). We affirm.

The child's mother left the child with respondent's mother while respondent was in prison. Respondent later executed a power of attorney in an attempt to confer custody of the child to his mother while he was imprisoned. A few months later, the child's aunt discovered that the child was not receiving proper care at her grandmother's home and petitioner became involved. Respondent had a lengthy criminal record involving nonviolent crimes, had been incarcerated several times, and had violated his parole both times he was released on parole. His earliest release date from prison was June 2007.

The trial court did not clearly err in finding that respondent failed to provide proper care and custody for the child and would not be able to do so within a reasonable time. The placement of a child with a relative where the child receives adequate care does not render the child without proper care and custody. *In re Nelson*, 190 Mich App 237, 241; 475 NW2d 448 (1991). Here, however, the child did not receive proper care at her grandmother's home, and respondent was not able to provide proper care and custody for the child while he was in prison. Although respondent hoped to be released from prison in June 2007, there was no guarantee of

his release at that time, and even then respondent would not be able to immediately provide proper care and custody for the child. The trial court did not clearly err in finding that § 19b(3)(g) was established by clear and convincing evidence.

The trial court also did not clearly err in finding that, based on respondent's conduct or capacity, there was a reasonable likelihood the child would be harmed if returned to respondent's home. At the time of the termination hearing, respondent had no home and could not care for the child. Further, he wanted her to remain with his mother, who was not providing proper care for the child. The trial court did not clearly err in finding that § 19b(3)(j) was also established by clear and convincing evidence.

Affirmed.

/s/ Brian K. Zahra
/s/ Richard A. Bandstra
/s/ Donald S. Owens